

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CLEMMER MARCUS MONTGOMERY,

Petitioner,

Case Number: 2:17-CV-13957

v.

HON. GEORGE CARAM STEEH

SHIRLEE HARRY,

Respondent.

**OPINION AND ORDER TRANSFERRING CASE TO THE  
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Petitioner Clemmer Marcus Montgomery, a Michigan state prisoner, has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons set forth below, the Court determines that this is a successive habeas corpus petition and orders it transferred to the United States Court of Appeals for the Sixth Circuit, pursuant to 28 U.S.C. § 1631<sup>1</sup> and 28 U.S.C. § 2244(b)(3)(A).

Petitioner challenges his 1993 conviction for first-degree premeditated murder, Mich. Comp. Laws § 750.316, for which he is serving

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<sup>1</sup> 28 U.S.C. § 1631 provides, in relevant part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed . . .

a life sentence. In 1998, Petitioner filed a habeas corpus petition in this Court challenging the same conviction challenged in this petition.

Petitioner's claims were denied on the merits. *Montgomery v. Trippett*, No. 2:98-71080 (E.D. Mich. Oct. 26, 1998)

Before a prisoner may file a habeas petition challenging a conviction already challenged in a prior habeas petition, the prisoner must "move in the appropriate court of appeals for an order authorizing the district court to consider the application." 28 U.S.C. § 2244(b)(3)(A). Petitioner's prior habeas petition was denied on the merits, and Petitioner has not obtained from the Court of Appeals for the Sixth Circuit authorization to file a successive petition. When a second or successive petition for habeas corpus relief is filed in the district court without prior authorization, the district court must transfer the petition to the Court of Appeals. *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997).

Accordingly, the Court **ORDERS** the District Court Clerk to transfer this case to the United States Court of Appeals for the Sixth Circuit.

**SO ORDERED.**

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

Dated: January 4, 2018

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on January 4, 2018, by electronic and/or ordinary mail and also on Clemmer Marcus Montgomery #196574, Earnest C. Brooks Correctional Facility, 2500 S. Sheridan Drive, Muskegon Heights, MI 49444.

s/Barbara Radke  
Deputy Clerk